IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.35 OF 2006

IN

SUIT NO.3106 OF 2005

...

Devan Jitendra Mehta ...Plaintiff

v/s.

Jayantilal Khandwala & Sons Pvt.Ltd. ...Defendant

...

Ms.Manorama Mohanty i/b S.K.Srivastava & Co. for the Plaintiff.

Mr.Vivek Kantawala i/b Vivek Sharma for the Defendant.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 27TH JUNE, 2006

**P.C.:**

1. The Plaintiff has filed the suit for recovery of Rs.35 lakh with interest. The Plaintiff is claiming interest from 25-7-2001. It is clear that the suit of the Plaintiff is based on two cheques, which according to the Plaintiff, were issued by the Defendant dated 25-7-2001 and which have been dishonoured. If the suit is based on the two cheques, it is definitely barred by the law of limitation. The Plaintiff, however, claims that the suit of the Plaintiff is based on the consent terms signed by the parties in the month of February, 2004. But perusal of the consent terms shows that the consent terms incorporated an agreement for payment of an amount of Rs.22,41,920/- and not an amount of Rs.35,00,000/- with interest. Therefore, prima facie, it cannot be said that the suit of the Plaintiff for decree in the amount of Rs.35 lakh with interest is based on the consent terms alleged to

have been signed in the month of February, 2004. As it prima facie appears that the suit of the Plaintiff is barred by the law of limitation, decree cannot be passed in favour of the Plaintiff. Summons for judgment is, therefore, disposed of. Unconditional leave is granted to the Defendant to defend the suit. Written statement to be filed within eight weeks. Suit to be transferred to commercial cause list.

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